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Prepared June 23, 2004 (for July 15, 2004 hearing)

To: Commissioners and Interested Persons

From: Diane Landry, District Manager
Dan Carl, Coastal Planner

Subject: **Santa Cruz County LCP Major Amendment Number 1-03 Part 2 (Aptos-Seascape combining district)** Proposed major amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's July 15, 2004 meeting to take place at the Westin South Coast Plaza, 686 Anton Boulevard, in Costa Mesa.

Summary

Santa Cruz County is proposing to add a combining district that would apply to +-150 residential properties in the Aptos-Seascape area of south Santa Cruz County, just downcoast of Hidden Beach. This enclave of residential structures is located along a series of stepped platforms graded into the coastal bluffs when the subdivision and homes were originally developed in the 1960s. About half of the properties are in a locked gate private community fronting the immediate ocean (inland of the Via Gaviota seawall), with the reminder located just inland of that. As viewed from the beach and offshore (the primary public viewshed), this residential area is generally comprised of larger structures whose mass is emphasized by the fact that they step down the bluffs or are constructed immediately at (and/or cantilevered over) the blufftop edges. This is emphasized at beach level by the massive Via Gaviota seawall, a concrete monolith consisting of a large concrete wave recurve atop a bed of rip-rap rocks extending about a quarter of a mile along the shoreline.

The proposed Aptos-Seascape (AS) combining district would relax certain development standards for these properties (height, coverage, setbacks, floor area ratio (FAR)). More specifically, for most of the properties at the seawall, FAR and lot coverage requirements would be eliminated. For the remainder of the properties, allowed height would be increased from 28 feet to 30 feet, FAR would be eliminated, rear and side setbacks would be reduced, and lot coverage would be allowed to increase from 30% to 45%.

The County indicates that these changes are meant to match the development standards in effect at the time that the majority of these structures were originally developed back in the 1960s. Until recently, the County had interpreted the standards under which the subdivision was originally constructed as the standards to which development (including redevelopment) needed to conform. However, it was more recently discovered that the original subdivision standards were not codified in any way for this area (e.g., through a planned unit development ordinance, specific plan, or equivalent mechanism). As a result, recent development projects have include minor variances to allow development similar to the



California Coastal Commission

July Meeting in Costa Mesa

Staff: D.Carl Approved by:

SCO Major LCPA 1-03 Part 2 AS district stfprt 7.15.2004.doc

1960s standards.

Staff understands the County's desire to provide development standards that are tailored to this stretch of coast, and the issues associated with the difference between today's LCP standards and those of the 1960s. However, Staff believes that the proposed AS overlay district would allow for a scale of development many times in excess of that that is allowed now. In particular, by removing FAR and removing and adjusting coverage requirements, the maximum allowed size of structures would be increased by approximately 50% for the RB properties, and by 80% for all other affected properties; including the four properties along the seawall nearest to Hidden Beach, and the properties downcoast of the seawall that have SFDs immediately atop the back beach bluffs. This increased scale of development would lead to additional public viewshed impacts inconsistent with the LCP Land Use Plan (LUP) policies the AS district is meant to implement.

Staff discussed with the County several ways of ensuring that the maximum scale of development could be reined-in with these properties consistent with the LUP. However, such an exercise is complicated by a series of factors including that these structures are all located on a stepped coastal bluff where the 25-foot LCP-required geologic hazard setback has not been maintained, that the properties straddle the bluff edges, that it is unclear which LCP standards are not met currently (and this has not been evaluated), and that a subset of these homes are located atop a large seawall that bisects the property lines (i.e., the parcel lines extend seaward of the seawall and onto the beach). In other words, this is not a relatively flat inland subdivision to which typical zoning scaling tools can uniformly be applied. Rather, it is more appropriate to develop standards specific to the constraints and issues present at this location. Such an exercise is better undertaken at the County level where the existing non-conformities can first be detailed, where the interactions of specific scaling tools in various combinations and in relation to specific property constraints can be evaluated, and where the affected landowners can more easily participate in the process.

Thus, Staff recommends that the proposed LCP amendment be denied.

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I. Staff Recommendation – Motion and Resolution

Staff recommends that the Commission, after public hearing, deny the proposed amendment. The Commission needs to make one motion in order to act on this recommendation.¹

Denial of Implementation Plan Major Amendment Number 1-03 Part 2

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion. I move that the Commission **reject** Part 2 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County.

Resolution to Deny. The Commission hereby **denies** certification of Part 2 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Standard of Review

The standard of review for proposed modifications to the County's LUP is consistency with the Coastal Act. The standard of review for proposed modifications to the County's IP is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local

¹ Note that the motions and resolutions refer to "Part 2 of Major Amendment Number 1-03." The reason for this is that this amendment request is part two of a four part LCP amendment submitted by the County. In other words, LCP amendment number 1-03 is in four parts. The other three parts of the amendment are not a part of this staff report, and are not before the Commission at this time.



guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel by parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified LCP LUP.

B. Proposed LCP Amendment

The proposed amendment would:

- Add new LCP IP Sections 13.10.465 through 13.10.467, adding Aptos Seascapes, or AS, as an LCP combining district applicable to the approximately 150 properties in the Aptos-Seascapes area of south Santa Cruz County, just downcoast of Hidden Beach;
- Rezone the affected parcels to add the AS combining district. The Single-Family Ocean Beach Residential (RB) properties would be rezoned to RB-AS, and the Single-Family Residential (R-1-6) properties would be rezoned to R-1-6-AS; and
- Modify existing LCP IP Section 13.10.170(d) to identify “Aptos-Seascapes” as an LCP designation implemented by the new AS district.

See exhibit A for a map of the affected properties, exhibit E for the proposed new and modified LCP sections, exhibit F for the proposed rezoned properties. The County’s staff report to the Board of Supervisors on this matter is in exhibit C, and the Board’s resolution on the proposed LCP amendment is in exhibit D.

Per proposed Section 13.10.467, the new AS district would modify certain LCP development standards. For the RB properties, the allowable height would be decreased from a maximum of 17 feet to a maximum of 16 feet, and the 40% coverage and 50% FAR maximums would be eliminated (i.e., there would be no FAR or coverage limitations). For the R-1-6 properties, the required rear setback would be reduced from 15 feet to 10 feet, the required side setbacks would be decreased from 8 feet and 5 feet (a total of 13 feet) to 6 feet and 5 feet for 60-foot wide lots (a total of 11 feet) and to 5 feet and 5 feet for 50-foot wide lots (a total of 10 feet), the maximum height allowed would be increased from 28 feet to 30 feet, allowed lot coverage would increase from 30% to 45%, and the 50% FAR maximum would be eliminated. See table below:

Table of Existing and Proposed LCP standards	Front Setback	Side Setback	Rear Setback	Maximum Height	Maximum Coverage	Maximum FAR
Current RB	10'	0' & 5'	10'	17'	40%	50%
Proposed RB-AS	10'	0' & 5'	10'	16'	None	None
Current R-1-6	20'	5' & 8'	15'	28'	30%	50%
Proposed R-1-6-AS (50' wide)	20'	5' & 5'	10'	30'	45%	None
Proposed R-1-6-AS (60' wide)	20'	6' & 5'	10'	30'	45%	None



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C. LUP Consistency

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the LCP Land Use Plan.

1. Applicable Land Use Plan Policies

Visual Resources

The LUP is extremely protective of coastal zone visual resources, especially along the shoreline. LUP policies include:

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

LUP Policy 5.10.6 Preserving Ocean Vistas. Where public ocean vistas exists, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LUP Policy 5.10.7 Open Beaches and Blufftops. Prohibit the placement of new permanent structures that would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for approved structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.



LUP Policy 5.10.9 Restoration of Scenic Areas. *Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.*

LUP Policy 7.7.1 Coastal Vistas. *Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...*

Community Design

The LCP's viewshed policies dovetail with its community design direction in LUP Chapter 8. In fact, the goal of Chapter 8 is as follows:

To preserve and enhance the quality of life in Santa Cruz County through the guidance of development activity to protect open space for its aesthetic, recreational and environmental values, to foster high quality residential areas as pleasant and socially constructive areas in which to live, and to enhance the quality of residential, commercial and industrial development to achieve an aesthetic and functional community.

Cumulative Impacts

The LCP protects against impacts associated with individual projects, as well as the cumulative impact from such projects in relation to current and potentially planned development. The LUP states:

LUP Policy 2.1.4 Siting of New Development. *Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.*

Conclusion

In sum, the County's LUP protects the public viewshed, such as that from the beach and offshore the affected properties, and from inland to the beach and ocean. The mass and scale of the built environment plays an important role in the nature and value of public viewsheds. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.

2. Consistency Analysis

The changes proposed would affect about 150 properties located in the Aptos-Seascape area of south Santa Cruz County, just downcoast of Hidden Beach (see maps in exhibit A and air photos of the area in exhibit B). This enclave of residential structures is located along a series of stepped platforms graded into the coastal bluffs when the subdivision and homes were originally developed in the 1960s. About half of the properties are located within a locked gate private community fronting the immediate ocean (between a locked gate on Clubhouse Drive, just seaward of Via Palo Alto, and the Via Gaviota seawall on the beach), with the reminder located just inland of that (again, see exhibits A and B). As viewed



from the beach and offshore (the primary public viewshed), this residential area is generally comprised of larger structures whose mass is emphasized by the fact that they step down the bluffs or are constructed immediately at (and/or cantilevered over) the blufftop edges. This is emphasized at beach level by the massive Via Gaviota seawall, a smoothed concrete monolith consisting of a large concrete wave recurve atop a bed of rip-rap rocks extending about a quarter of a mile along the shoreline here. See project area photos in exhibit B.

The County indicates that the proposed LCP changes are meant to match the development standards in effect at the time that the majority of these structures were originally developed in the 1960s. Until recently, the County had interpreted the standards under which the subdivision was originally constructed as the standards to which development (including redevelopment) needed to conform. However, it was more recently discovered that the original subdivision standards were not codified in any way for this area (e.g., through a planned unit development ordinance, specific plan, or equivalent mechanism). As a result, recent development projects have included minor variances to allow development similar to the 1960s standards.

RB Issues

The RB zoned properties are beach-fronting properties located on the seaward side of Via Gaviota (see zoning map in exhibit A). These properties are all developed with existing one-story SFDs that appear to be set back an average of twenty feet or so from the seawall.² Because these parcels are almost exclusively 50 feet by 150 feet in size, the existing LCP limits these parcels to a lot coverage of 3,000 square foot (or a 3,000 square foot SFD given the one-story limit that applies here).³ The existing structures have not been inventoried to know how large they are in relation to the current LCP district zoning standards. See photos in exhibit B.

By eliminating the coverage and FAR requirements as proposed, the limiting mass factor in RB would become the setbacks. This is complicated by the presence of the seawall, and the fact that the parcels themselves extend seaward of it and out onto the beach by about 40 feet. In any case, by applying the 10-foot front setback, the 5-foot side setback, and considering the presence of the seawall, a maximum SFD footprint (and SFD size since there is a one-story limitation) of 4,500 square feet would be allowed in the proposed AS.⁴ In other words, as proposed the maximum allowed massing for these RB parcels would increase 50% from what is currently allowed.⁵ Such massing would be tempered slightly by the

² Note that these existing setbacks, as well as other existing setbacks, heights, coverage, and FARs, have not been identified by the County or otherwise. In other words, it is not clear to what extent the affected properties currently conform – or don't conform – to LCP requirements.

³ Because the parcels are limited to one-story, the maximum allowed 40% coverage is the limiting mass factor since the maximum 50% FAR for a 50 foot by 150 foot lot would be 3,750 square feet.

⁴ Where the rear setback line is taken to be the seawall. It could be argued that the rear setback is not the seawall, because the code measures it from the property line, but to do so would imply that development cantilevered 30 feet seaward of the seawall would be allowed. The code is not clear on this point.

⁵ Because applicants are likely to want to maintain some amount of useable backyard space between their residence and the seawall, it seems likely that they wouldn't take the entire coverage allotment for the structure, but even allowing a 10 foot backyard leaves one with a 4,050 square foot SFD – much larger than is currently allowed. At the other end of the spectrum, it is possible, if not probable,



fact that the proposed AS overlay in the RB district would reduce the maximum height by a foot (from 17 feet to 16 feet), but such a relatively small decrease in maximum allowed height would be negligible in relation to the increased allowed massing otherwise.

The existing development atop the seawall already imposes significantly into the public viewshed. This is partly due to the fact that it is developed on what was historically beach (pre-Coastal Act), and is fronted by a large smoothed concrete, and decidedly unnatural, seawall atop rip-rap that serves to emphasize its intrusion into the beach and shoreline aesthetic. To allow even larger SFD structures that would further degrade the viewshed would be inappropriate and inconsistent with the LUP, including the policies listed above.

R-1-6 Issues

All other affected properties are zoned R-1-6 parcels (see zoning map in exhibit A). These parcels are of various sizes, but can be generalized as being roughly 60 feet wide by 100 to 150 feet deep. As such, the existing LCP limits these parcels to a coverage of 1,800 to 2,700 square feet respectively, and to an FAR (or overall SFD size) of 3,000 to 4,500 square feet respectively.⁶ In other words, the LCP currently allows fairly large residential development in this area. The fact that these structures are generally developed to the edge of the blufftop or extended over it, serves to emphasize their massing in the beach and offshore viewshed because there is not a setback area to help soften the massing (see photos in exhibit B).

By eliminating the FAR requirement, and increasing the allowed coverage from 30% to 45%, the proposed AS district would allow for SFD structures with maximum footprints ranging from approximately 2,700 square feet (for 100-foot deep lots) to 4,050 square feet (for 150-foot deep lots). At two-stories, this would translate to an upper end maximum of 5,400 square feet to 8,100 square feet SFDs.⁷ In other words, the maximum allowed massing for these R-1-6 parcels would increase 80% from what is currently allowed. In addition, the height limit would be raised from 28 feet to 30 feet, only increasing the allowed maximum massing in this regard.

These R-1-6 changes are particularly problematic in two locations. The first location is the four properties on the upcoast end of Via Gaviota (between the street and the seawall, and fronting the beach) that are zoned R-1-6 (see exhibit B, and specifically zoomed-in photos on page 2). These properties are located immediately inland of the beach nearest the Hidden Beach coastal accessway, and it is unclear why they are currently zoned R-1-6 and not RB like the rest of the houses developed atop what was historically beach sand (i.e., on the seaward side of Via Gaviota).⁸ The proposed changes would allow

that applicants could propose cantilevered development out over the seawall that met the setback requirements. There are other reasons why such proposed cantilevered development may not be approved (e.g., other beach and visual resource protection policies), but it could be argued narrowly to be within the setback requirements for these parcels.

⁶ The coverage and FAR requirements are controlling in this respect because the setback areas leave a building footprint in excess of the coverage requirement.

⁷ Ibid (setback requirements not controlling).

⁸ Development at even the existing R-1-6 maximum massing standards for these sites would result in significant impacts on the beach viewshed.



for maximum sized structures that could loom significantly over the beach and into the beach and offshore viewshed.

The second location is the area on the seaward side of Via Palo Alto where a row of SFD structures are currently located at the blufftop edge, and in some cases cantilevered over it just downcoast of the seawall (see photos in exhibit B, and specifically zoomed-in photos on pages 3 and 4). Because these structures are currently one-story, the new allowed maximum R-1-6 standards could serve to significantly increase the mass and scale of this sub-area over time.⁹ Similar to the seawall for the RB properties, the perceived massing for this area is exacerbated by the large upper bluff retaining wall structures immediately below the residential developments along the portion of Via Palo Alto.

As with the RB discussion above, the existing R-1-6 development already imposes significantly into the public viewshed. To allow even larger SFD structures that would further degrade the viewshed would be inappropriate and inconsistent with the LUP, including the policies listed above.

Combining Districts

Typically, combining districts describe standards that apply in addition to the underlying zoning district standards. In this way, combining districts can provide specific and explicit guidance for certain issues within certain areas, but the underlying zoning district regulations are not superceded otherwise. This is typically accomplished by ordinance text that specifies as much. In this case, the proposed AS district is not written in this manner (see proposed Section 13.10.467 in exhibit E). This section states that these new standards are the standards that shall apply within the affected R-1-6 and RB properties. This could be read to supercede other standards that are not being explicitly modified or identified. For example, the existing RB standards specify a maximum of one-story, and the R-1-6 standards specify a maximum of two-stories. It could be argued that because the text does not say 'in addition to the underlying zone standards' (as stated in other LCP combining districts), that the new standards are what apply overall.¹⁰ This would negate such things as number of stories, and could lead to even larger SFDs in terms of gross square footage than those identified above (though the maximum massing would still be controlled by the height limits). In tandem with the scale issues, this ambiguity only heightens the LUP inconsistencies identified above.

Zoning Maximums

It is noted here that zoning district maximums are not entitlements, but rather standards that need to be understood in relation to other site constraints and issues, and other applicable LCP policies. In that regard, one could argue that these properties would not develop to the maximum identified above because the LCP's beach and viewshed compatibility policies would still apply, and would dictate

⁹ Again, as with the R-1-6 properties along the seawall, development at even the existing R-1-6 maximum massing standards for these sites would result in significant impacts on the beach viewshed.

¹⁰ Such an argument is bolstered by the fact that proposed Section 13.10.467 identifies both changed criteria (like eliminating FAR) as well as criteria that is staying the same (like RB setback requirements), but is silent on other criteria (like number of stories allowed). If it were only identifying standards that were different from the underlying zone district, then the standards that weren't changing wouldn't be listed.



smaller structures than would be allowed under the maximum district zoning standards. However, such compatibility policies are much more subjective. Moreover, it has been the Commission's experience in general, and in Santa Cruz County's coastal zone in particular, that applicants regularly propose, and the County regularly approves, residential projects that are at, near, or even over zoning maximums (and it is the exception to the rule that projects are proposed and/or approved at significantly lesser scales than the district maximum, such as the existing LCP standards as compared to those proposed here). That is not to say that development to the absolute maximum scale standards is what would happen 100% of the time in the future at these properties, but it does provide context for understanding the question of what is an appropriate zoning maximum.

More appropriately, zoning maximums should be dictated by what is actually the maximum mass and scale that would be appropriate for a given site as it relates to its surroundings. Zoning standards shouldn't set up unrealistic expectations for a certain scale of development if it is known that that scale needs to be reduced;¹¹ particularly when the zoning exercise is being applied to a smaller area through a combining district meant to provide additional explicit and directive specificity (such as the AS area). It is more appropriate in a combining district (and in other zoning districts) to specify the scale that is appropriate in this defined area than to rely on the remainder of the LCP to provide that relative scale. To do otherwise is to allow individual projects to define their own relative scale depending on individual more subjective analyses relating to beach and viewshed compatibility, and the individual coastal permit approvals associated with those applications. Thus, although the above discussion details worst-case scenarios, it is not unexpected that such worst-case scenarios are oftentimes what happens over time – particularly in a redevelopment scenario as would occur in the subject area that is mostly all developed.¹²

In addition, it is noted here that there may be CC&Rs that may affect what can be built and to what scale on the subject properties. For example, according to the County, CC&R limitations on height and number of stories may apply to a subset of properties in the proposed AS district area. Neither the County nor the Coastal Commission are party to these CC&Rs, however, and there is nothing to stop the property owners who are party to them from amending them in ways inconsistent with the LCP. In other words, any such CC&Rs may help limit the maximum scale of development (to the extent that they do), but cannot be relied upon to do so in an enforceable LCP context. As such, their effect in this analysis must be disregarded.

Conclusion

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. The County's desire to provide development standards that are tailored to this stretch of coast, and the issues associated with the difference between today's LCP standards and those of the 1960s, is understandable. However, the proposed AS overlay district would allow for a

¹¹ It has been the Commission's experience that applicants often assert that a zoning district maximum is their right, even when other policies and/or constraints may dictate otherwise.

¹² Residential redevelopment, and particularly redevelopment in areas where property and residential values are high (such as Santa Cruz County in general and shoreline properties specifically), predominantly results in larger replacement residential structures.



scale of development many times in excess of the LCP standards that exist now. In particular, by removing FAR and removing and adjusting coverage requirements, the maximum allowed size of structures would be increased by approximately 50% for the RB properties, and by 80% for all other affected properties; including the four properties along the seawall nearest to Hidden Beach, and the properties downcoast of the seawall that have SFDs atop the back beach bluffs. This increased scale of development would lead to additional public viewshed impacts inconsistent with the LUP policies, including the policies listed above, that the AS district is meant to implement. Thus, and as detailed above, the changes proposed are not consistent with the LUP and inadequate to carry it out. Therefore, the amendment is denied as submitted.

In many cases, the Commission suggests modifications to address inconsistencies that result in denial of an LCP amendment submittal. In this case, however, such an exercise is complicated by a series of factors including that these structures are all located on a stepped coastal bluff where the 25-foot LCP-required geologic hazard setback has not been maintained, that it is unclear which other LCP standards are not met currently, that the properties straddle the bluff edges, and that a subset of these homes are located atop a large seawall that bisects the property lines (i.e., the parcel lines extend seaward of the seawall and onto the beach). In other words, this is not a relatively flat inland subdivision to which typical zoning scaling tools can uniformly be applied. Rather, it is more appropriate to develop standards specific to the constraints and issues present at this location. Such an exercise is better undertaken at the County level where the existing non-conformities can be first detailed and understood, where the interactions of specific scaling tools in various combinations and in relation to specific property constraints can be evaluated, and where the affected landowners can more easily participate in the process.

The Commission's denial is thus without prejudice to a future amendment submittal that was crafted to address the unique circumstances of this pre-Coastal Act subdivision in a way that is mindful of the current LUP.

D. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Sections 21080.9 and 21080(b)(5), and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

Public Resources Code (CEQA) Section 21080.9. Local coastal programs or long-range land use development; university or governmental activities and approvals; application of division.
[Relevant Portion.]...certification of a local coastal program...by the...Commission...shall be subject to the requirements of this division.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. *[Relevant*



Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

Section 21080.9 of CEQA provides that actions to certify LCPs (and LCP amendments) are subject to CEQA. This staff report has discussed the relevant LUP conformity issues with the proposal. All above LUP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

